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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,969	09/04/2003	Jay S. Walker	02-058	8907
22927 7590 09/12/2008 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905				
EXAMINER				
SAGER, MARK ALAN				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
09/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/655,969

Applicant(s)

WALKER ET AL.

Examiner

M. Sager

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-61 is/are pending in the application.
4a) Of the above claim(s) 10-41 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 42-61 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/3/08 has been entered.

Election/Restrictions

2. This application contains claims 10-41 drawn to an invention nonelected without traverse (implicit) in the reply filed on May 30, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

3. Claims 42-55, 57-58, 60-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (6012983). This holding is maintained from prior action as reiterated herein. Response to Applicants argument is provided below and incorporated herein. Walker discloses a gaming device and method teaching claimed steps/features including an apparatus having a processor and a memory that stores a program and a computer readable medium (figs 1-9), determining a player would like to communicate with another (3:28-42, 10:44-47), monitoring gaming activities of a player at a gaming device (fig 1-9, esp. 8a-9, ref 300, 'player tracking'), obtaining a player identifier (5:57-64, 6:49-65), supplying the player with a communication device (3:55-56, ref 6 - pager or cellular telephone), determining an individual who will communicate with player or determining whether to initiate communication (3:28-42 or use of cellular telephony

circuitry to connect to another), enabling communication between player and individual via the portable communication device (3:28-42), determining a prompt and outputting the prompt is communication with player via communication device (3:28-42, 4:64-5:6), an offer of service and enabling the individual to provide a service is to alter or authorize automated play based on player updated/revised inputs (2:29-67, 3:28-42, 49-11, fig 8a-9). Further, Walker '983 clearly includes pager or cellular telephone that includes circuitry for wireless communication. The cellular telephone implicitly includes cellular telephone circuitry and Walker '983 does not stipulate any limitation that negates use of a cellular circuitry of cellular telephone as remote communication device.

Claim Rejections - 35 USC § 103

4. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Finnegan. Response to Applicants remark is provided below and incorporated herein. Finnegan discloses claimed method including determining a player would like to communicate, supplying the player with a communication device, determining an individual who will communicate and enabling communication but lacks obtaining a player identifier from the player as noted by Applicants remark (p 10-11). It would have been obvious to an artisan at a time prior to the invention to add obtaining an identifier from the player to Finnegan's method for security or to charge user account if not returned or for its use. Similarly, by analogy to a person checking out (i.e. borrowing) a book from a library by obtaining a persons identifier to have on record which person is assigned which book, it would have been obvious to obtain a player identifier for use of the cellular phones discussed by Finnegan to know which player obtained use of a phone to ensure its return or to know whom to charge for its services.

5. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker ('983). Walker lacks specifically identifying storing email address; however, since email address is another equivalently known user identifier, it would have been obvious to an artisan at a time prior to the invention to add email address as known to Walker to identify player. Essentially, although email address is another identifier, it fails to patentably distinguish over identifiers taught by Walker.

6. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker ('983). Walker lacks debit; however, debit accounts were notoriously well known user account. It would have been obvious to an artisan at a time prior to the invention to add debit as known to Walker to allow player to use a debit account as payment identifier. Essentially, the type of financial account fails to patentably distinguish over Walker and known account types.

Response to Arguments

7. Applicant's arguments filed 3/5/08 have been fully considered but they are not persuasive. Regarding Applicants' remark that Walker lacks enabling communication between player and the individual via the portable communication device, the examiner disagrees as noted to Jeffrey Ambroziak (47387) during telephonic discussion on 3/28/08 since Applicants' remarks lack consideration of Walker's teachings as a whole in that Walker states the player can increase the credit balance by phoning the casino and authorizing the casino personnel to increase the credit balance on the machine and that remote communications with the player permit the player both to enjoy the ongoing play, and to alter any pre-established, limiting criteria, for example relating to funding, may also be altered remotely, through a telephone call or appropriate communication to casino personnel (sic). Finally, Applicants' remark fails to consider that the

cellular telephone implicitly includes cellular telephone circuitry and where Walker does not stipulate any limitation that negates use of its cellular circuitry of cellular telephone as remote communication device inclusive of communicating with any individual via its cellular circuitry. Walker includes 'cellular telephone' which has distinct structure implicit and its disclosure did not present any exception to this.

Regarding Applicants assertion that Walker fails to teach 'at a gaming device'; the examiner disagrees with Applicants analysis. The Office agrees that Walker states in part use of telephone to call casino personnel, but disagrees that this requires the use of the phone being remotely from gaming device at least since there is no disclosure within Walker that teaches that the pager or cellular phone (3:57) ceases to function when the player is 'at the gaming device'. As stated above reiterated here, Applicants' remark fails to consider that the cellular telephone implicitly includes cellular telephone circuitry and where Walker does not stipulate any limitation that negates use of its cellular circuitry of cellular telephone as remote communication device inclusive of communicating with any individual via cellular circuitry. Walkers' cellular telephone has distinct structure implicit and Walkers disclosure did not present any exception to this. Thus, the Office inquires whether Applicant is stating on the record that Walkers cellular telephone ceases or is prohibited to function when 'at the gaming device'; and, if Applicant is making that affirmative statement on the record, to require such as under 105 the Applicant provide factual support thereto whether from citation from the reference or as a declaration or affidavit for Office consideration since at present, the Office maintains, the cellular telephone as a portable communication device in Walker (3:57) continues to function 'at the gaming device' at least since there is no disclosed prohibition/exclusion for its circuitry to not function. Of note,

'at the gaming device' is broad in that the language includes as basis from within gaming art a tethered controller and a wireless controller that each is a communication device in communication to a gaming device that the communication device (controller or joystick in this example) is both at the gaming device and remote therefrom for remote communication. Thus, a cellular telephone of Walker likewise functions remote and at the gaming device. Finally, despite Applicants' reasoning that the use of communication device by Walker is remote so as to be opposite to 'at the gaming device', that interpretation is in patently wrong when Walker is considered as a whole by an artisan at a time prior to the invention since there is no basis provided that the cellular telephone would cease communication capability inherent therein from operating. Thus, Walker anticipates claimed invention.

Conclusion

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boushy, Parra, Walker ('431, '835, '282, '638), Wynn and Yamagishi each disclose providing the player a portable communication device to communicate with another while 'at a gaming device', that although not forming any rejection each also anticipate claims.

10. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114.

See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

/M. A. Sager/
Primary Examiner, Art Unit 3714